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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Jeffrey D. Sutherland et. al. Docket No.: N/A  
Application: 10/695,107 Art Unit: 3632  
Filed: October 24, 2003 Examiner: Anita M. King  
TITLE: CARRIER FOR VARIOUS-SIZED ARTICLES OPERATIVELY SUPPORTED BY A VEHICLE

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APPEAL BRIEF

This brief is submitted in response to the final Office Action dated July 29, 2005.  
The requisite fee set forth in 37 C.F.R. 41.20 (b)(2) accompanies this Brief.

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## **REAL PARTY IN INTEREST**

The real parties in interest are the Inventors, Jeffrey D. Sutherland and Michael G. Vieira.

**RELATED APPEALS AND INTERFERENCES**

NONE

## **STATUS OF CLAIMS**

Claims 7 and 10 were canceled. The appealed claims are 1-6, 8 and 9. The appealed claims were all rejected in the final Office Action.

## **STATUS OF AMENDMENTS**

An Amendment After Final Action dated October 19, 2005 was submitted in response to the final Office Action dated July 29, 2005, was not deemed to place the application in better form for appeal, and was not entered.

## SUMMARY OF THE CLAIMED SUBJECT MATTER

NOTE: References by page and line number are made with respect to the specification and drawings of the submitted application, as available in the Image File Wrapper, and NOT of either of the published applications, as available in the Published Documents.

*Claim 1* Independent claim 1 is directed towards an apparatus (Fig. 1 and Fig. 2), specifically a carrier 20, for supporting one or more articles 6, of various sizes and shapes, on a vehicle surface 10, during transport with a mechanized vehicle.

The carrier 20 has one or more straps 7, constructed of material sufficiently strong to secure the articles 6 onto the carrier 20 (page 4, lines 26-28).

The carrier 20 also has a planar platform 1, which itself has a body constructed of a rigid material (page 3, lines 23, 24). The platform 1 cooperates with the straps 7 for holding the articles 6 against the platform 1. The platform 1 has a planar top surface 22 for engaging the articles 6 being held by the straps 7. The platform 1 also has a planar bottom surface 24, parallel to the top surface 22, for engaging the vehicle surface 10. The platform 1 also has a plurality of bearing members 5 arranged in succession, to enable adjustment of the straps 7, and a plurality of slots 4 separating the bearing members 5. The platform 1 also has at least one recess 23, aligned with the slots 4 and bearing members 5 and recessing from the bottom surface 24 into the body of the platform 1. The recess 23 is for accepting the straps 7 through at least two of the slots 4 and engaging the straps 7 against the bearing members 5, for preventing the straps 7 from engaging the vehicle surface 10.

*Claim 2* Dependent claim 2 is directed towards the apparatus of claim 1, further claiming that the straps 7 are permanently fastened to the platform 1.

*Claim 3* Dependent claim 3 is directed towards the apparatus of claim 1, further claiming that the straps 7 are removable from the platform 1.

*Claim 4* Dependent claim 4 is directed towards the apparatus of claim 1, further claiming that the straps 7 vary in width and length.

*Claim 5* Dependent claim 5 is directed towards the apparatus of claim 1, further claiming that one or more handles 11 are formed into the body of the platform 1.

- Claim 6 Dependent claim 6 is directed towards the apparatus of claim 1, further claiming that one or more handles 11 are attached to the body of the platform 1.
- Claim 8 Dependent claim 8 is directed towards the apparatus of claim 1, further claiming that the top surface 22 of the platform 1 is comprised of a slip resistant material (page 4, lines 7-16).
- Claim 9 Dependent claim 9 is directed towards the apparatus of claim 1, further claiming that the bottom surface 24 of the platform 1 is comprised of a slip resistant material (page 4, lines 7-16).

## GROUPS OF REJECTION TO BE REVIEWED ON APPEAL

### First Grounds of Rejection

Claim 7 was rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written requirement.

### Second Grounds of Rejection

Claims 1-6, 8 and 9 stand rejected under 35 U.S.C 103(a) as being unpatentable over German Publication 19936653 to Fleck in view of U.S. Patent 5,881,477 to Watson.

The final Office Action indicates:

"Fleck discloses the claimed invention except for the limitations of a plurality of bearing members."

"It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the number of bearing members and slots in Fleck to have included the number of bearing members and slots as taught by Watson for the purpose of increasing the adjustability of the apparatus to accommodate a variety of articles."

"In regards to applicant's argument that Fleck does not disclose a planar top surface and a planar bottom surface, the planar top surface (4a) in Fleck includes wedges that are not formed integrally with the top planar surface, these wedges appear to be removable so that the apparatus can accommodate different objects. The knobs or feet on the bottom surface of the apparatus appear to be removable and thus not needed to support the apparatus on a surface."

## ARGUMENT

### *Contention of Appellants with Respect to the First Grounds of Rejection*

Claim 7 was rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written requirement.

Appellants have no contention with respect to the First Grounds of Rejection. Claim 7 was canceled in the Amendment after Final Action dated October 19, 2005.

### *Contention of Appellants with Respect to the Second Grounds of Rejection*

Claims 1-6, 8 and 9 stand rejected under 35 U.S.C 103(a) as being unpatentable over German Publication 19936653 to Fleck in view of U.S. Patent 5,881,477 to Watson.

Appellants submit that claims 1-6, 8 and 9 are allowable and respectfully request reversal of the Final rejection. Appellants also submit that the above-referenced rejections are defective because the cited references, taken alone or in any combination, fail to teach or suggest each and every feature of the claims as required by 35 U.S.C. 103(a).

#### *Claim 1*

Appellants contend there is a significant structural difference between the current invention and Fleck that patentably distinguishes the current invention from Fleck. Independent claim 1 of the current invention recites a platform having "a planar top surface for engaging the one or more articles". Fleck teaches a platform having a planar top surface that does not engage the article (tubular or cylindrical container); the planar top surface in Fleck instead further requires a wedge pair with angled surfaces that engage the article (tubular or cylindrical container).

A German-to-English translation of independent claim 1 in Fleck states:

"on its surface (4a [the planar top surface]), the holder has two wedge surfaces (16, 17) which are facing each other and which form a defined area (18) on which the tubular container (2) rests to offer protection against torsion."

Appellants contend, when the Final Action states that the:

"wedges appear to be removable so that the apparatus can accommodate different objects",

such a structural modification would render Fleck unsatisfactory for its intended and claimed purpose of engaging the article (tubular or cylindrical container) to the wedge surfaces, and therefore, rejection on the basis of such modification is improper.

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)

The final Office Action indicates:

"It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the number of bearing members and slots in Fleck to have included the number of bearing members and slots as taught by Watson for the purpose of increasing the adjustability of the apparatus to accommodate a variety of articles."

The wedge pair in Fleck is structurally predisposed to accept tubular or cylindrical containers of various diameters, and thus appellants contend there is no motivation or suggestion for desirability to increase adjustability of the apparatus by including the plurality of bearing members and slots taught by Watson. Appellants also contend that when this combination is further combined with the two other modifications proposed in the Final Action, that the:

"wedges appear to be removable so that the apparatus can accommodate different objects. The knobs or feet on the bottom surface of the apparatus appear to be removable and thus not needed to support the apparatus on a surface",

such extensive structural modification would result in a substantial decomposition and redesign of the elements shown in Fleck, as well as a significant departure from the basic principle under which the Fleck construction was designed to function.

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings

of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990)

Appellants further contend, when the Final Action states that:

"It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the number of bearing members and slots in Fleck to have included the number of bearing members and slots as taught by Watson for the purpose of increasing the adjustability of the apparatus to accommodate a variety of articles",

there also exists in Fleck neither the suggestion of nor the motivation for desirability to combine with Watson because the nature of the problems to be solved by Fleck and Watson is different. Fleck teaches a holder of tubular or cylindrical bodies on a motor vehicle. Watson teaches a snowshoe. A snowshoe can be defined, for direct comparison, as a holder of a human foot on snow. Applicants contend a tubular or cylindrical body is not analogous to a human foot, and a motor vehicle is not analogous to snow.

A statement that modifications of the prior art to meet the claimed invention would have been "'well within the ordinary skill of the art at the time the claimed invention was made'" because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levingood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993)

#### Claims 2-6, 8 and 9

Appellants submit that dependent claims 2-6, 8 and 9 are not separately patentable from independent claim 1, and therefore contend patentability pursuant to the appeal decision of independent claim 1.

*Summary*

In view of the preceding contentions, Appellants respectfully submit that claims 1-6, 8 and 9 are allowable.

Respectfully submitted,

  
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## CLAIMS APPENDIX

### Claim Listing:

1. (previously presented) An apparatus for supporting one or more articles of various sizes and shapes on a vehicle surface during transport with a mechanized vehicle, the apparatus comprising:
  - one or more straps;
  - a planar platform having a body and cooperating with said one or more straps for holding the one or more articles against the platform, the platform further comprising:
    - a planar top surface for engaging the one or more articles being held by the one or more straps;
    - a planar bottom surface parallel to the top surface for engaging the vehicle surface;
    - a plurality of bearing members arranged in succession to enable adjustment of the one or more straps;
    - a plurality of slots separating said bearing members; and
    - at least one recess, aligned with said plurality of slots and said bearing members, recessing from the bottom surface into the body of the platform, for accepting said one or more straps through at least two of said slots for engaging the straps against the bearing members and for preventing the straps from engaging the vehicle surface.
2. (previously presented) The apparatus of claim 1 wherein the one or more straps are permanently fastened to the platform.

3. (previously presented) The apparatus of claim 1 wherein the one or more straps are removable from the platform.
4. (previously presented) The apparatus of claim 1 wherein the one or more straps vary in width and length.
5. (previously presented) The apparatus of claim 1 wherein one or more handles are formed into said body of the platform.
6. (previously presented) The apparatus of claim 1 wherein one or more handles are attached to said body of the platform.
7. (canceled)
8. (previously presented) The apparatus of claim 1 wherein the platform top surface is further comprised of a slip resistant material.
9. (previously presented) The apparatus of claim 1 wherein the platform bottom surface is further comprised of a slip resistant material.
10. (canceled)

## **EVIDENCE APPENDIX**

**NONE**

## **RELATED PROCEEDINGS APPENDIX**

**NONE**